IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 531 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RANCHHODBHAI PRAHLADDAS PATEL

Appearance:

1. Criminal Appeal No. 531 of 1992

Mr.P.R.Abichandani, learned A.P.P. for Petitioner No. 1

MR J.S.Unwala, learned advocate for

Mr.PK JANI for Respondent

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. The respondent above named was tried before the

learned Judicial Magistrate, First Class Kalol in Criminal Case no. 1864/88 for offences punishable under Sections 7(1) and 17 of Prevention of Food Adulteration Act (hereinafter referred to as the Act). At the end of trial, the learned J.M.F.C.Kalol was pleased to acquit the respondent-accused. Dissatisfied with the said judgment and order of acquittal, the State has preferred this appeal.

2. The brief facts of the present case are as under: The complainant is Food Inspector and on 12.05.1988 at about 4.00 p.m. he went with one Jayantibhai Ambalal Patel to the shop of the present respondent and took sample of turmeric powder. He then divided the powder into three equal parts and sealed in bottles and took signature of the present respondent. Thereafter, after analysis report Q.2-680/88 dated 2.6.88 it was found that the turmeric powder was adulterated. Therefore, the respondent violated the provisions of Prevention of Food Adulteration Act. Therefore the complaint was filed in the court on 27.06.1988. After recording the statements, charge was framed against the respondent. The respondent-accused claimed not guilty and claimed to be tried.

3. The learned trial court, on recording depositions of various witnesses, going through the documentary evidence produced on record and after hearing the learned advocates for the parties, held that the prosecution has failed to prove the charge against the accused and acquitted the accused. It is against this judgment and order this appeal is filed by the complainant-State.

4. According to learned A.P.P.Mr.P.R.Abichandani for the State, learned Magistrate over looked the important aspect of the case that it is mandatory u/s 11 of the Act at the time of taking sample, presence of witnesses is necessary. The complainant at the time of taking sample from the present respondent had kept the panch present and thereby the complainant had strictly complied with the requirement of section 11 of Prevention of Food Adulteration Act. As per the statutory requirement, notice was given to the accused and Section 11(1)(a) was followed. The panch admitted in the deposition that sample was drawn after form no. 6 was given prior to drawing the sample. In the aforesaid circumstances, the panch was present at the time of taking sample. The sample was drawn by the Food Inspector himself and none else. There is nothing on record to indicate anything contrary. At best the assistant only helped the procedure by putting the covers on the bottles in which

sample was stored. The sample was drawn, stored and sealed as per the requirement of provisions of Sec. 10(3). Amount was paid towards the cost price of 450 gms. of turmeric powder (loose) to the tune of Rs.7.20 ps. and receipt was taken alongwith bill for the same from the accused in presence of panch. The procedure of sealing was done by the Food Inspector himself. No defect was found in the said procedure. The sample was forwarded to the public analyst on the next day itself i.e. 13.05.1988. The same was promptly examined by the analyst on 17.05.1988 and came to the conclusion that sample was found to be adulterated with, in as much as, sodium chloride was present and the same was not found in confirmation with the standards as laid down by provisions of the Rules, 1955.

5. According to Mr.P.R.Abichandani learned A.P.P. for the State, inspite of the above mentioned evidence, the trial court has committed a grave error, resulting into miscarriage of justice, by recording/pronouncing an acquittal. Hence, interference is required by reappreciating the evidence in light of the fact that the statutory obligations. duties have been duly complied and discharged. Accordingly, he prayed for allowing the appeal and convict and sentence the respondent-accused.

6. Against the aforesaid submissions, Mr.Unwala learned advocate for Mr.P.K.Jani learned advocate for the appellant submitted that the provisions of Sec. 11(1)(b) is mandatory in nature and therefore the procedure of sampling, marking and sealing all should be done by the Food Inspector himself and nobody else. The samples should be taken in three equal parts, which is not done in the present case. The provisions of Sec. 10(7) of the Act are mandatory in nature and therefore also the panch witness should remain present when the sampling, marking and sealing is done, which is not done in the present case as can be seen from the evidence of the panch witness himself. Lastly, it was prayed that the offence is of 1988 and this appeal is heard in 2003 and therefore also after a gap of 15 years the judgment and order of acquittal cannot and should not be reversed.

7. In support of his submissions, Mr.Unwala learned advocate for the respondent relied on the following authorities on the point of sampling, marking and sealing.

(1) State of Gujarat V/s Gandabhai Arjanbhai reported in 1980(2) G.L.R.682.
(2) State of Gujarat V/s Keshavlal Kalidas Patel &

Anr. reported in 1980(2) G.L.R.26.

8. On the point of microscopic test not permitted under the Act, Mr.Unwala learned advocate for the appellant relied on the following authorities :

(1) Jagdish Chandra V/s State of Uttar Pradesh reported in AIR 1981 S.C. 1233 (=)1981 Cri.L.J.739.
(2) Chimanlal Govindji Thakker V/s State of Gujarat & Anr. reported in XXXVIII(1) G.L.R. 458.

9. So far as the acquittal should not be reversed by the High Court, Mr.Unwala relied on the following authorities :

(1) Dhani Kumar V/s M.C.D. in Supreme Court on Prevention of Food Adulteration Cases 1951-1979 page 523.
(2) Jamshedpur Notified Area Committee V/s Durga Prasad reported in 1969 Cri.L.J. 704 (Patna High Court).
(3) Municipal Corporation of Delhi V/s Amichand and another reported in 1974 Prevention of Food Adulteration Cases page 64 (Delhi High Court).

10. So far as adulteration found to be very marginal nature and the adulteration was not injurious to health of anyone, Mr.Unwala learned advocate for the appellant has relied on the following authorities :

(1) Umedmal V/s State of Maharashtra reported in AIR 1979 S.C. 1700.

11. By relying on the unreported judgment of this court in Criminal Revision Application no. 173 of 1989 decided on 30.08.2001 by J.R.Vora, J, Mr.Unwala learned advocate for the appellant submitted that looking to the facts in acquittal appeal, only fine should be imposed and no sentence or conviction should be imposed.

12. I have perused the authorities cited by the learned advocate for the respondent and also gone through the paper book. It is true that in the report given by Public analyst dated 27.05.1988 in column no. 8, it is mentioned as "Microscopy the sample is turmeric powder mixed with sodium chloride." While going through various sections of the Act, I have not come across any procedure whereby microscopy test is provided.

A) 0.5.20.01 is relevant turmeric (haldi) powder

means powder obtained by grinding the dried rhizomes or bulbous roots of the plant of Curcuma longa L. It shall be free from artificial colouring matter. The powder shall conform to the following standards :

Moisture... Not more than 13.0 per cent by weight
Total ash.....Not more than 9.0 per cent by weight
Ash insoluble in dilute HCL....Not more than 1.5% by weight
Test for lead chromate...Negative
Total starch per cent by weight...Not more than 60.0%

13. I do not find anywhere regarding the microscopic test to be done for knowing what is mixed with what item. In the present case, it appears that the public analyst has used microscopic test to come to the conclusion that what material is mixed with the turmeric powder. It is true that sodium chloride i.e. salt is mixed with the turmeric powder and salt is not injurious to health. Sodium Chloride i.e.salt is mixed to the tune of 9% which means that much turmeric powder is given less to the consumer. In view of the aforesaid position, public analyst came to the conclusion that turmeric powder does not conform to the standards and provisions laid down under Prevention of Food Adulteration Rules, 1955.

14. It may be noted that the P.F.A.limits of total ash is 9.0% but in this case the result of the analyst shows that total ash is 13.4% which is 4.0% in excess as shown in col.2 of the report at exh. 22. It is the submission of Mr.Unwala that result of 13.4% total ash is also known on account of microscopic test on the turmeric powder and therefore also the benefit be given to the respondent-accused. I do not agree with this submission of Mr.Unwala learned advocate for the respondent. If the microscopic test was done for all the results, then microscopy should have been mentioned against all the tests but only microscopic test is mentioned against col.8. Therefore, there is a reason to believe that in normal circumstances the test of total ash is done. Therefore, though this court is in favour of present respondent so far as microscopic test is concerned, it is not with the respondent-accused on the test of total ash which exceeds the P.F.A. limit by 4.4.%.

15. So far as the contention raised by Mr.Unwala regarding the sampling, sealing and marking is concerned, I am of the opinion that mere presence of peon at the place of respondent-accused and that he helped in sealing the muddammal article will not vitiate the proceeding and

accordingly there is no violation of provisions much less Sec.11(1)(a) of the Act.

16. So far as the deposition of panch witness is concerned, Mr.Unwala learned advocate for the respondent submitted that the presence of panch witness at the time of sampling, sealing and marking is in doubt as he has admitted in his cross-examination that he was called after panchanama was prepared. Moreover, the sample was not taken in his presence. He has also not instructed anything at the time of writing the panchanama.

17. Against the aforesaid submissions, if we see the cross-examination by the learned A.P.P., the panch witness has admitted that in his presence the panchanama exh.17 was drawn and that in his presence the sample of turmeric was taken. It was divided into three parts and placed in clean bottles. That was sealed as per the procedure. Lastly, he also admitted that the accused was also given notice as per Form no. 6 and that sampling was done in his presence. Now against the aforesaid deposition, if something is stated in cross-examination of the learned advocate for the accused in the trial court, it has no value. Therefore also, I am of the opinion that the reasonings of the trial court discussed in the last paras of the judgment is perverse and requires to be set aside. The learned trial court came to the conclusion that the complainant has not followed the provision of Sec. 11 of the said Act and accordingly the prosecution has failed to prove the case against the present respondent and accordingly acquitted the respondent by answering issue no. 1 in the negative.

18. It is true that this court is hearing the acquittal appeal and it should be very much slow in reversing the judgment of the trial court and that too when the appeal is heard after a gap of 15 years. However, in catena of decisions, the Apex Court has held that if the reasonings given by the trial court while acquitting the accused are perverse, the superior court must interfere to do justice. In this case also the reasonings given by the learned trial court are perverse and I am bound to interfere with the judgment and order.

19. It was argued by learned advocate Mr.Unwala learned advocate for the respondent that if this court comes to the conclusion that the judgment and order of the trial court is required to be set aside, then looking to the gravity of the offence and that the adulterated food article is not injurious to health, the court should punish the accused by awarding fine and no conviction

should be passed on him. For this purpose, Mr.Unwala learned advocate for the respondent relied on certain authorities as mentioned above. I am also of the opinion that 15 years have passed as the offence has taken place on 12.05.1988. The respondent is born on 03.9.1941, he is aged about 62 years. He has also closed his business since long. The prosecution in this case is not able to prove whether excess 4.4% of total ash would be injurious to health if it is consumed. Having considered all these facts, I am of the opinion that fine should be imposed only.

20. For the foregoing reasons, the appeal is allowed. The judgment and order of the learned J.M.F.C. Kalol in C.C.no.1864/88 dated 31.03.1992 is set aside and the appellant is directed to pay fine of Rs.5,000/- before the trial court within a period of six weeks from today i/d simple imprisonment for three months. Yadi to the concerned court for necessary follow up.

(SHARAD D DAVE,J)

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